

78-SBE-074

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
TIMOTHY L. AND RUTH J. McLAUGHLIN)

For Appellants: Timothy L. and Ruth J.
McLaughlin, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Timothy L. and Ruth J. McLaughlin against a proposed assessment of additional personal income tax in the amount of \$710.46 for the year 1971.

Appeal of Timothy L. and Ruth J. McLaughlin

The sole issue for resolution is whether respondent's determination which was based on corresponding federal action was erroneous.

On their 1971 federal and state income tax returns appellants claimed itemized deductions for sales- and medical expenses (\$368). Thereafter, appellants' federal return was audited by the Internal Revenue Service which disallowed the three claimed expenses in their entirety. Since the changes were applicable under state law, respondent issued its notice of proposed assessment in the amount of \$959.90. Sometime later the Internal Revenue Service revised its determination and allowed a deduction for salesman's expenses in the amount of \$3,631. Respondent made a corresponding change which resulted in reducing its proposed assessment to \$710.46, the amount of tax presently in controversy.

Section 18451 of the Revenue and Taxation Code provides, in part, that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a determination by the Franchise Tax Board based upon a federal audit is presumed to be correct and the burden is on the taxpayer to overcome that presumption. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Willard D. and Esther J. Schoellekman, Cal. St. Bd. of Equal., Sept. 17, 1973.) Here, appellants have offered no evidence to indicate that the federal action was erroneous. Therefore, we must conclude that appellants have failed to carry their burden of proof and respondent's determination of additional tax for the year 1971 must be upheld.

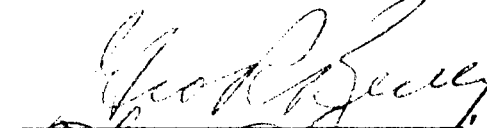
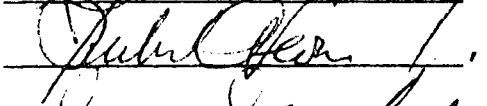

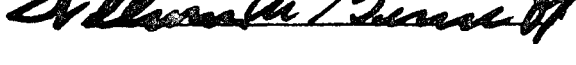
Appeal of Timothy L. and Ruth J. McLaughlin

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Timothy L. and Ruth J. McLaughlin against a proposed assessment of additional personal income tax in the amount of \$710.46 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of August, 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member